

**Town of Milford  
Zoning Board of Adjustment Minutes  
June 7, 2012  
NH Signs, Representing Toadstool Bookstore  
And Lorden S.C., LLC  
Case #2012-12  
Variance**

Present: Kevin Johnson, Chair  
Fletcher Seagroves  
Laura Horning  
Zach Tripp

Absent: Len Harten - Alternate

Secretary Peg Ouellette

The applicant, NH Signs representing Toadstool Bookstore and Lorden S.C., LLC, owner of 586 Nashua St., Map 44, Lot 6, "C" district, Oval sub-district, is requesting a Variance from Article VII, Section 7.06.7:E.2 to install an additional 33 SF of signage to the existing 30 SF wall sign totaling 63 SF. The maximum allowed signage, based on 50% of the storefront's linear measurement of 60 ft., is thirty (30) square feet.

**THE MINUTES FROM JUN 7, 2012 WERE APPROVED ON AUG 16, 2012**

Kevin Johnson, Chairman, read the notice of hearing into the record as well as the list of abutters. He informed the applicants that there was a four-member Board present and the applicants are entitled to be heard by a full five-member Board. If they chose to be heard by the four-member Board they must sign a waiver, and if their case is denied the lack of a full Board is not grounds for appeal. They agreed to be heard this evening and signed the waiver.

Cliff Conti of NH Signs, the applicant, was present. Bill Williams, owner of the store, was present.

The applicant C. Conti presented his case. He stated they tried to give data based on GIS regarding distances. Using calculations from GIS they provided proposed views of what the sign will look like as well as pictures of the plaza where the store is located.

K. Johnson said normally he would have gone out and measured everybody's signs. Did they?

C. Conti responded they did not; it isn't what they are addressing in terms of hardship. It doesn't have to do particularly with what the people next door have. Bill Williams has owned the bookstore for four years. He moved his store; Mr. Williams will explain why. The store opened in March 1989. It opened in Peterborough in 1972 and the Milford store has been on the end of Lorden Plaza. They are moving to the separate building into a smaller space because the landlord raised their rent. It is a smaller space but has 10 foot larger frontage. They have moved a portion of the sign to see somewhat what it would look like.

Z. Tripp asked if the "Bookstore" sign currently hanging represents 30 SF.

B. Williams said yes. That is a portion of the existing sign.

Z. Tripp said he was trying to get the scale.

K. Johnson asked if they are proposing to move the existing sign from the old location to the new location.

B. Williams said one of the issues that will come up, and what he views as a hardship in a sense, is the length of the name of the shop. It's been their name for 40 years. It is a long name that needs space to spell it out. They actually dropped the "The" to shorten it. They want to add the "Toadstool" part, which is an additional 33 SF, bringing it to 63 SF instead of the 30.

C. Conti stated that it could be seen from the picture that it was a wall area that had the sign. When they put the sign there in 1993 they wanted to make it unique and once they were there they had a small sign; the landlord changed the roof structure and they got a permit for a bigger sign based on the code and the Dollar Store and the bookstore got to be on the wall. He had a wall area where he had a sign. When he called to say he was moving they knew the code had changed. They looked at the length of the front and increased length of the front. They dropped "The" from the name, trying to ask for as little as needed. In the photo he passed out you can see the "Bookstore. With the uniqueness of the "Toadstool" name, people may ask whether this is the same store. The sign has been brought up to UL specs and has been cleaned. They put that part of the sign up, but it is right at 30 SF. They are asking to put the word "Toadstool" up there. He did increase frontage and by law it is based on frontage. It will not be encroaching on anyone next to him.

Z. Tripp and L. Horning both asked if both doors are theirs.

C. Conti said the drawing shows the frontage, and they have three doors. Because of the door and where the gutters are located they have to put the sign a little off-center instead of exactly over the main door.

L. Horning stated they are not making the sign any larger, but moving it from one fascia to another fascia.

C. Conti said that is the intent.

L. Horning asked if the issue is difference in the square footage between the old building and the new building.

C. Conti said it is the difference between the old code and the new code.

L. Horning asked what discrepancy was between the code and the minimum square feet he has now.

C. Conti said he had 50 SF and moved to 60 SF. Linear feet is how the code is measured. It used to be measured by different rules.

K. Johnson interrupted. This is considered a wall sign and sign ordinance 7.06.7:E1 states that the wall signs may not project above the drop of the parapet, wall or roof line at the wall. It appears their sign extends above it.

C. Conti said every sign on the building does.

K. Johnson said he understood that but most of those were there before the change.

F. Seagroves said less than 12 inches.

K. Johnson said it can't be more than 12 inches out from the face of the wall, but it can't extend above the roof line.

B. Williams said they could try to move it down.

C. Conti said they are trying to keep it visible to traffic.

K. Johnson said his feeling is that they have applied for a variance for additional square feet. He would like the Board to, if it feels the additional square feet are necessary for a proper visual impact, also grant within the variance the to extend above the roof line to maintain the aesthetics of the sign. He asked if they would be comfortable with this. If not, they may need to send the applicants back to Community Development.

C. Conti said they approved the permit for the sign.

Z. Tripp said he would be comfortable with that condition.

L. Horning was undecided.

F. Seagroves said it is only 2 ½ feet.

K. Johnson asked the height of the sign letters.

C. Conti said they are two feet, five inches.

K. Johnson said that is the size of the letters, but the size of the fascia isn't shown so they don't know the size of the fascia.

C. Conti said there is not enough wall area to get a sign in. They did approach the building department when they did this.

F. Seagroves said regardless of the other signs, they must go by the current rules. He didn't have a problem with it.

L. Horning was still considering.

K. Johnson addressed her, saying the Board is allowed to attach a condition to a variance. They could specify that they be dropped down, but he felt that would look horrible and that's not what the Town would want.

C. Conti said in reality it is not that much. Looking straight on, it looks like a lot.

K. Johnson said that when he saw it, it appeared to be about 3 inches above and 3 inches below.

C. Conti said where the roof meets the parapet wall is at the parapet wall. He thought the parapet meant load-bearing walls.

K. Johnson said the definition includes fascias and facades, etc. There are about five definitions that for the purposes of this ordinance is considered wall, so they don't have to duplicate the same information five times. If it's a wall or a fascia or a parapet or a façade, it's all treated the same. He stated that he wanted to get the feel of the Board that this is an issue, and if anybody says anything about it, he wanted to make sure it was addressed.

L. Horning said they have no idea how high up.

C. Conti pointed to a photo that is actual size.

K. Johnson said, without getting out and measuring, his estimate from the parking lot was that it is about three inches above and three inches below. He noticed it was above and below the fascia.

Z. Tripp suggested proceeding with the rest of the case while Laura considers.

The Board agreed.

Z. Tripp asked the applicants if they could confirm that the square footage of the sign is the same as it was in the plaza.

C. Conti said it is the same size. They actually minimized the letters.

Z. Tripp said then it is smaller.

C. Conti said by a few inches; they pushed the lettering closer to get the 30 SF allowed and removed the "The."

Z. Tripp said, then the square footage at Lorden Plaza was X and when they moved to this plaza it is X minus something?

C. Conti responded exactly.

K. Johnson asked the square footage of the "The."

C. Conti said it was 18 inches, so 1/12 SF. There was a box that went above the "T" but they eliminated it so as not to ask for more than was needed. "Toadstool Bookshop" is enough. He continued, saying the intent of the code as stated is to encourage effective use of signs as a means of communication and retain the Town's ability to attract economic development. He would think maintaining a good business would be included in that. Although he is not an engineer, he did his own engineering and a minimum of any traffic decision is 5 to 1,000 feet to see the sign and make that turn decision. There are a lot of trees in the way. The owner wants to get his name there so that people will see this is the same book shop they have been going to; he owns the sign and got it under the original code. To get it any smaller would lose the character of the name and would not be visible from any distance. He feels this is reasonable. He has 60 feet of frontage, so it is only adding 11 ½ feet of signage to a 60 foot front. The owner has two signs, and was allowed to put the old sign on the side of the building because he's on the corner. So he's giving up his old original sign, and the "The" and condensing the letters, to try to get the "Toadstool" back on the sign. They are appealing to the Board to allow him to continue the name of the shop. He is in the same plaza; he is not moving downtown or some other district.

B. Williams said when you drive into the plaza and look toward where the old store was, you can't even see the other building at all.

K. Johnson said the bank obstructs the view.

B. Williams said the bank obstructs the view and the only place you can see it is from quite a distance. As you approach from the Nashua side, Postal Center has a small sign at the end of the building which can be seen but the rest can't be seen. Approaching from the Shaw's side the video store's small sign on the end can be seen. It can be seen there are businesses there, but anybody in the middle can't be seen from any of the normal vantage points. The only place you can begin to see it is when looking carefully across the parking lot from 101A, between the landscaping.

C. Conti said they were looking at other signs in the area, including St. Mary's Bank and Stop & Shop, which has about 11 signs. It is reasonable for them; he feels this is reasonable for this one book shop. Before, he was able to add to the wall to put that sign up, but the new landlord invested in a new sign with a different look and they want to maintain that.

Z. Tripp asked if the sign is lit.

C. Conti said the landlord requires internally lit signs.

There being no further questions from the Board, the Chair opened the meeting for public comment. Bill McKinney, Code Enforcement Officer for the Town of Milford spoke to make a point of clarification on the roof design of the building. Where they are mounting the sign is the roof in its entirety. Everything from the columns up is the roof, so this sign will not extend above the roofline of the building. There are parapets on either end but this is just an architectural detail as part of the structure.

L. Horning said that makes it easier. She said the separate facilities on either side are also a little higher than where the fascia is, speaking to the consistency.

K. Johnson said those were all pre-existing requirements.

L. Horning said she was addressing the continuity.

K. Johnson stated he didn't want them to come back again.

K. Johnson asked if there were any comments. There were none. He closed the public portion of the meeting.

K. Johnson read into the record an e-mail received from Lorden S.C. LLC, the property owner of Lorden Plaza, addressed to Bill McKinney consenting to the proposed sign alteration and asking the Building Department to allow Toadstool to pull the required permits.

C. Conti then read their application into the record as follows:

A variance is requested for Article VII Section 7.06.7:E2 of the Zoning Ordinance to permit Toadstool Bookshops to install additional 33 sq. ft. to existing wall sign. Under code, 30 sq. ft. is allowed.

Facts supporting this request:

**1. Granting the variance would not be contrary to the public interest because:**

This sign has been allowed and displayed in the plaza since 2003 when owner invested in a larger sign as the smaller sign was inadequate for customer.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

7.06.1 encourages the effective use of signs for communication (2) to retain ability to attract business. Granting variance will allow owner to display his full name.

**3. Granting the variance would do substantial justice because:**

This sign was permitted and purchased as the reasonable way to identify the store. Granting will allow owner to continue the reasonable use of his property.

**4. Granting the variance would not diminish surrounding property values because:**

The owner would be able to have the full sign at his new location and it won't change the appearance of the plaza or encroach neighboring stores.

**5. Unnecessary hardship.**

**A). Owing to special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship because:**

**i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Public is accustomed to this sign and the full name of the store.

**ii) and; The proposed use is a reasonable one because:**

The store is over 700 ft. from street and requires this sign for traffic decision and identity.

**B) Explain how, if the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use it:**

The name of store, to be read from over 700 ft. and to maintain his identity, requires that he be allowed to move his sign to this location, same plaza.

**C) Notwithstanding paragraph (B) above, a variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or person with a recognized physical disability to reside in or regularly use the premises, provided that:**

**i). The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:**

The stated intent is to allow a reasonable use of signs. This sign was previously considered reasonable and should be allowed to be used as it is, in full identity. They are trying to be fair to their readers by giving them a sign they can read from a distance.

B. Williams asked to comment. He said that their business is books that are meant to entertain and inform. In the same way, the sign is meant to inform their customers, to find their way. In a sense, it puts a hardship on the person trying to find their way somewhere if they can't read the sign.

K. Johnson asked the Board if they had any additional questions or comments. He then read into the record from the ordinance Section 7.06.7, Sign Requirements by Sign Type. He said this is considered a wall sign so it is covered by Paragraph E which contains the definition of a wall sign. He didn't read the rest of the definitions and read the applicability section. He then read the five specific criteria: *That the variance not be contrary to the public interest, the spirit of the ordinance is observed; substantial justice is done; values of surrounding properties are not diminished; and that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For the purposes of this subparagraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

**Would granting the variance diminish the value of surrounding property?**

F. Seagroves addressed the value of abutting property. He didn't see any reason this would diminish abutting property.

Z. Tripp did not see that granting the variance would diminish the value of abutting property as the abutting properties were all businesses. Also, the letter from the plaza owner supports it. The owner would not support it if he thought it would diminish other properties in the plaza.

L. Horning did not believe it would diminish property values in the area; in fact, signage would hopefully result in better traffic for the area. She felt it could be granted without diminishing any values, and it could be an enhancement.

K. Johnson agreed that granting the variance would not diminish the value of abutting properties. As Z. Tripp stated, the abutters all have signs. This sign is not going to create a hazard. It is a sign among other businesses that have signs.

**Would granting the variance not be in the public interest?**

F. Seagroves saw no harm here.

Z. Tripp agreed. Granting the variance would not be contrary to the public interest. It is not unduly violating the zoning objective. It will not alter the character of the neighborhood; it will fit with the signs that are already there.

L. Horning agreed. Granting would not be contrary to the public interest. She agreed with both Board members who had already spoken.

K. Johnson agreed it would not be contrary to the public interest.

**Would granting the variance do substantial justice?**

F. Seagroves said yes. The handbook says the guiding rule is any loss to the individual that is not outweighed by benefit to the public. He did not see any public gain by denying.

Z. Tripp agreed. Weighing the loss to the applicant and gain to the public, the loss to the applicant would be having only a very small 30 SF sign or having only the word "Bookstore" or "Toadstool". That is definitely a loss and he didn't see the public would gain from a 30 SF sign.

L. Horning agreed for the reasons stated and because of the peculiarity of the vegetation and the bank that sits in front of the property. Granting the variance would do substantial justice to both the applicant and the public.

K. Johnson agreed it would do substantial justice. They could consider a small benefit to the public by a reduction in the amount of signage throughout the town; however, he felt that requiring this applicant in this location to conform to that would be to his detriment and make it more difficult to have his business identified to passing traffic.

**Can the variance be granted without violating the spirit of the ordinance?**

F. Seagroves stated the book says they are looking for general health, safety and general welfare of the community. He didn't see any health or safety problem. They stated lessening congestion in the street; being able to find the store right off would lessen congestion.

Z. Tripp said he believed it would not violate the basic zoning ordinance. He referred to 7.06.1A and read from the list of intent highlighting those he felt applied to this property: Minimize potential adverse affects of signs to nearby public and private property(he said this was discussed already and he didn't believe there was any impact); complement the character of the zoned district (he believes it will complement the existing signs); enable fair and consistent sign regulation (he would talk more to hardship looking at the other signs in that plaza, it is within scale).

L. Horning agreed the variance could be granted without violating the spirit of the ordinance, going back to the book where it cites general health, welfare and public safety. She knows that Milford has one of the fastest growing aging populations in the state, and she personally likes the larger lettering. It is more visible from the road and lessens congestion of looking for what someone can't see. Like Zach, she would go to the hardship test also, the peculiarity of the visibility where this storefront sits in proximity to the road.

K. Johnson agreed. He went to several NH Supreme Court cases that said that every variance violates the spirit of the ordinance to some degree. It is up to the Zoning Board to balance the needs of the applicant and the community. The applicant has made a case in which that balance will be met by allowing the larger signage.

**Would denying the variance result in unnecessary hardship?**

K. Johnson elected to respond first. The second criteria – is the proposed use a reasonable one? It is reasonable to request this much signage on the building in that location. He tied that with his reasoning for the fair and substantial relationship between provisions of the ordinance and this application. This is why he asked about dimensions of the sign. On the stores they can see how large the other signs are. If they restrict this applicant to the size in the ordinance it would put him at a distinct disadvantage to the other businesses in that plaza because they all have larger signs. That in and of itself, in his mind, is sufficient reason to meet the relationship standard.

Z. Tripp agreed with the Chair. The use is a reasonable one. The scale and sign in reference to other signs in the plaza – he is not trying to do a Times Square type of sign. The applicant did make an effort to get as close to compliance as possible by removing "The". In the previous location they had two signs and now are down to one. Regarding fair and substantial relationship, he didn't think full application of this ordinance was necessary. What is unique about this property is it is similar to all the other property. The ordinance must be applied equally and he didn't believe it was. The Movie Scene and Postal Center probably violate this ordinance with less frontage and more signage. Requiring him to conform to 30 SF would be a hardship.

F. Seagroves said it would be a hardship because he looked at signs in the plaza. If they went by the ordinance they would be much smaller than others, although those were probably there before this ordinance. They can't use that as an example, but it would be a hardship not to have a sign about the same size. They do have a little sign up there.

B. Williams said that is a temporary sign that says "Toadstool".

F. Seagroves said that is the one that would probably meet the ordinance?

C. Conti said no, it's temporary.

F. Seagroves said his point was that it's so small it would look out of place.

L. Horning said she had nothing further to say except when they were first deliberating referring it back to Community Development, that was her first thought –in looking at the photo and driving by the plaza, the sign is conducive to what is already going on in the plaza. She cited the uniqueness of the position of this storefront compared to the other businesses regarding visibility from the road. They have a handicap, as does that whole end of the building in that it can't be readily seen from the road because of the trees.

There is not fair and substantial relationship between the zoning ordinance and the provision of the ordinance, which is to maintain continuity throughout the property. This would make them a peculiarity. She wanted to note they have three entrances, giving more store frontage which may lend more balance once the sign goes up. They cannot address a financial loss. But she would agree denying the variance would result in unnecessary hardship.

K. Johnson asked if there were any additional comments; there were none.

K. Johnson then read: After reviewing the petition and hearing all of the evidence and taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact:

**1. Would granting the variance not be contrary to the public interest?**

F. Seagroves – yes

Z. Tripp – yes

L. Horning – yes

K. Johnson - yes

**2. Could the variance be granted without violating the spirit of the ordinance?**

L. Horning – yes

Z. Tripp – yes

F. Seagroves – yes

K. Johnson – yes

**3. Would granting the variance do substantial justice?**

Z. Tripp – yes

F. Seagroves – yes

L. Horning – yes

K. Johnson – yes

**4. Could the variance be granted without diminishing the value of abutting property?**

F. Seagroves – yes

Z. Tripp – yes

L. Horning – yes

K. Johnson - yes

**5. Would denial of the variance result in an unnecessary hardship?**

Z. Tripp – yes

F. Seagroves – yes

L. Horning – yes

K. Johnson – yes

K. Johnson asked if there was a motion to approve case # 2012-12.

Z. Tripp made the motion to approve Case #2012-12.

L. Horning seconded the motion.

**Final Vote**

F. Seagroves – yes

L. Horning – yes

Z. Tripp – yes

K. Johnson - yes

Case #2012-12 was unanimously approved.

K. Johnson reminded the applicant of the thirty (30) day appeal period.